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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICRON TECHNOLOGY, INC.,

Plaintiff,

v.

UNITED MICROELECTRONICS
CORPORATION, FUJIAN JINHUA
INTEGRATED CIRCUIT CO., LTD.,
and DOES 1-10,

Defendants.

Case No. 3:17-CV-06932-MMC

**DEFENDANT FUJIAN JINHUA
INTEGRATED CIRCUIT CO., LTD.'S
OPPOSITION TO PLAINTIFF MICRON
TECHNOLOGY, INC.'S MOTION TO LIFT
STAY**

Date: January 8, 2021
Time: 9:00 a.m.
Judge: Hon. Maxine M. Chesney
Courtroom: 7, 19th Floor

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1 **I. INTRODUCTION**

2 Fujian Jinhua Integrated Circuit Co., Ltd. (“Jinhua”) opposes Micron’s request to lift the
3 stay of this matter, which was issued by the Court in July 2019. At the time, the Court recognized
4 that Jinhua’s defenses would be hampered by the unavailability of key witnesses who would likely
5 take the Fifth Amendment if called to testify. Nothing has changed that equation, so the Court
6 should deny Micron’s motion.

7 The Defendants voiced concern at the time that many witnesses not named as individual
8 defendants in the criminal matter may assert their rights under the Fifth Amendment (or the
9 Taiwanese equivalent) based upon their concerns that they could be prosecuted by the Department
10 of Justice. Those same concerns continue to apply because the U.S. criminal case against Jinhua
11 remains slated for trial, and the Taiwan criminal case against United Microelectronics Corporation
12 (“UMC”) and several individual defendants is on appeal after a trial decision was entered in June
13 2020. Due to these pending criminal matters, numerous key defense witnesses, including the
14 named defendants in the U.S. criminal trial (Stephen Chen, J.T. Ho, and Kenny Wang) and other
15 unnamed UMC and Jinhua employees, may seek to invoke the Fifth Amendment if called to testify,
16 thus depriving Jinhua of the ability to mount a full defense.

17 The Court’s July 2019 Stay Order also recognized that judicial efficiency would be greatly
18 aided by allowing the U.S. criminal matter to proceed first, with this matter benefitting from the
19 evidence presented in the criminal matter. Those judicial efficiencies are now more discernable,
20 with the criminal trial currently calendared for August 2021. The stay will not result in an
21 “indefinite delay” as Micron claims, and this civil matter can proceed shortly thereafter using the
22 evidence from that trial. Indeed, Micron’s motion concedes that it intends to heavily rely on
23 matters covered in the Taiwan criminal trial and U.S. criminal matter. Proceeding with this matter
24 after the U.S. criminal trial will avoid duplicative motion practice and eliminate contentious
25 disagreements over the scope of permissible deposition testimony.

26 Contrary to Micron, continuing the stay will not prejudice Micron. Micron will be free to
27 pursue its damages case and any trade secrets above and beyond those in the criminal matter once
28 the criminal matter is resolved, and it will have the benefit of any documents and testimony

introduced in the U.S. and the Taiwan criminal proceedings. And Jinhua has already been effectively enjoined since it remains on the Department of Commerce's Entity List.

In short, all the same reasons for the stay apply now as they did last year. Accordingly, the stay should remain in place pending the resolution of the criminal trial.

II. STATEMENT OF FACTS

A. The Timing of This Motion Within the Context of the U.S. and Taiwan Criminal Proceedings and the Instant Case

On August 8, 2017, the Taiwan Taichung District Prosecutor's Office indicted UMC and UMC employees Kenny Wang, J.T. Ho, and L.T. Rong on charges of trade secret misappropriation. CR-ECF No. 7 at 19.¹

On December 5, 2017, Micron filed a Complaint seeking injunctive relief and damages against UMC, Jinhua, and unnamed "Does 1-10" ("Complaint") for claims under 18 U.S.C. §§ 1836 and 1839 (Defend Trade Secrets Act); 18 U.S.C. §§ 1962(c) and 1962(d) (Civil RICO); and Cal. Civ. Code § 3426 (California Uniform Trade Secrets Act). ECF No. 1. Micron also named Chen, Ho, and Wang as "Co-Conspirators." *Id.* at 4, 5. UMC Filed a Motion to Dismiss for Lack of Personal Jurisdiction on February 15, 2018 (ECF No. 27), and Jinhua filed a Motion to Dismiss for Lack of Jurisdiction and Insufficient Service of Process on October 2, 2018. ECF No. 106. This Court granted Jinhua's Motion to Dismiss on January 18, 2019 and afforded Micron leave to file an Amended Complaint. ECF No. 139. Micron filed its First Amended Complaint ("FAC") on February 8, 2019 (ECF No. 140-4), and this Court dismissed UMC's Motion to Dismiss as moot shortly thereafter. ECF No. 141. UMC and Jinhua then refiled their Motions to Dismiss on February 22, 2019 and March 14, 2019, respectively. ECF Nos. 153 and 168. In its May 2, 2019 Order, the Court dismissed Micron's claims under 18 U.S.C. §§ 1836 and 1839 (Defend Trade Secrets Act), but only to the extent they are based on an acquisition of trade secrets occurring before May 11, 2016. ECF No. 199. The Court also dismissed Micron's claims under 8 U.S.C. §§ 1962(c) and 1962(d) (Civil RICO) and Cal. Civ. Code § 3426 (California Uniform Trade

¹ Citations to docket entries in 18-cv-6643 and 18-cr-465 are identified as CV-ECF and CR-ECF, respectively, to differentiate from docket entries in the current matter.

1 Secrets Act). *Id.* Micron’s claims under 18 U.S.C. §§ 1836 and 1839 (Defend Trade Secrets Act)
 2 that are based on an acquisition of trade secrets occurring after May 11, 2016 remain in the case.
 3 *Id.* These claims directly overlap with the claims in the Government’s criminal case against UMC,
 4 Jinhua, Chen, Ho, and Wang. Micron filed its Second Amended Complaint (“SAC”) on May 24,
 5 2019. ECF No. 206.

6 On September 27, 2018, the United States Department of Justice indicted UMC, Jinhua,
 7 Chen, Ho, and Wang on charges of conspiring to commit economic espionage and theft of trade
 8 secrets, in violation of 18 U.S.C. §§ 1831 and 1832, as well as substantive counts of economic
 9 espionage and theft of and/or receipt of stolen trade secrets. CR-ECF No. 1 (“Indictment”). The
 10 Indictment, which was unsealed on November 1, 2018, revealed that the seven counts brought
 11 against the Defendants in the criminal case were predicated on the very same acts Micron has
 12 alleged as the premise for its claims under 18 U.S.C. §§ 1836 and 1839 (Defend Trade Secrets
 13 Act) in the instant case. *See id.*; ECF No. 247 at 2.

14 On June 12, 2020, the Taichung District Court issued its verdict on the criminal charges
 15 against UMC and the individual defendants after a three-month trial that lasted from January to
 16 April 2020. *See* CR-ECF No. 144 at 6. The Taiwanese prosecutor (at Micron’s request) appealed
 17 the verdict. *Id.* UMC and individual defendants J.T. Ho, Kenny Wang, and L.T. Rong (all of
 18 whom are named in Micron’s complaint) also appealed. *Id.*

19 On October 29, 2020, UMC appeared before this Court to enter a guilty plea in the U.S.
 20 criminal matter. CR-ECF No. 148. The plea relates to a single trade secret among the eight trade
 21 secrets mentioned in the 2018 indictment. *Id.* at ¶¶ 2(v), 2(w). Jinhua, Ho, Chen, and Wang remain
 22 defendants in the criminal matter, which is set for trial in August 2021. ECF No. 256 at 11.

23 **B. The Precise Same Set of Facts Are Alleged by the Government in Its**
 24 **Indictment**

25 In conjunction with its Indictment, the Government filed the United States’ Complaint for
 26 Injunctive Relief on November 1, 2018, Case no. 18-cv-6643 (CV-ECF No. 1 (“Government
 27 Complaint”)) asking for equivalent relief Micron seeks in its SAC. *See* SAC “Prayer for Relief”
 28 at 45-46; *and* Government Complaint at ¶ 1, (seeking permanent injunction to prevent UMC,

Jinhua, and Chen from transferring the alleged Micron trades secrets). The Government subsequently filed a Notice of Related Case in this proceeding the following day (“Notice”), (*see* ECF No. 131), giving this Court notice that the Indictment and the Government Complaint were related to the instant proceeding. In this Notice, the Government made explicit that the Government Complaint and the “Indictment concern[] the same events as described in Micron’s civil complaint,” and that “all three actions concern one or more of the same defendants and the same alleged events, occurrences, transactions, or property.” Notice at 3-4 (internal quotations omitted).²

Therefore, as the Court noted in granting the stay, the U.S criminal case is “based on the same allegations set forth in the instant civil case, i.e., the acquisition, use and disclosure of Micron’s trade secrets.” ECF No. 247 at 2 (citing Indictment, CR-ECF No. 1, ¶¶ 3-6, 8-9, 18, 20, 24-25, 32, 35-45).

III. LEGAL STANDARD

“Granting a motion to stay is within the sound discretion of the Court.” *Fuller v. Amerigas Propane, Inc.*, Nos. C 09-2493 TEH, 09-2616 THE, 2009 U.S. Dist. LEXIS 71413, at *2 (N.D. Cal. Aug. 3, 2009). The power to stay is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Id.* (quoting *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936) (internal quotation marks omitted))); *see also* ECF No. 247 at 2 (reciting that a court has discretion to stay a civil case in favor of a criminal prosecution).

A court may stay a civil proceeding “when the interests of justice seem to require such an action.” *See Jones v. Conte*, No. C 04-5312 SI, 2005 WL 1287017, at *1 (N.D. Cal. Apr. 19, 2005) (quoting *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995)). Whether to stay civil proceedings where there is a parallel criminal proceeding should be determined based on the circumstances and competing interests involved. *Id.* “In considering whether a stay is

² The government recently dismissed UMC from the civil matter pursuant to the plea agreement. CR-ECF No. 148 at ¶ 15.

appropriate, a court ‘should consider the extent to which the defendant’s fifth amendment rights are implicated,’ and, in addition, ‘should generally consider the following factors: (1) the interest of the plaintiffs in proceeding expeditiously with the civil litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the civil proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.’” ECF No. 247 at 2-3 (citing *Keating*, 45 F.3d at 324-25).

IV. ARGUMENT

A. **Lifting the Stay Will Significantly Impair Jinhua’s Ability to Mount an Effective Defense Due to the Likelihood that Key Defense Witnesses Will Assert Their Fifth Amendment Rights Rather Than Testify for Jinhua**

“[T]he strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter.” *Jones*, 2005 U.S. Dist. LEXIS 46962, at *3 (quoting *Sec. & Exch. Comm’n v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375-76 (D.C. Cir. 1980)). This is particularly true because criminal and civil proceedings arising out of the same matter present a “concern that allowing the civil action to proceed may undermine the defendant’s Fifth Amendment privilege against self-incrimination, result in discovery beyond the scope of what the Federal Rules of Criminal Procedure allow, expose the defense strategy, or otherwise cause prejudice.” *Square 1 Bank v. Lo*, No. 12-cv-05595-JSC, 2014 WL 7206874, at *1 (N.D. Cal. Dec. 17, 2014); *see also* ECF No. 247 at 5 (noting that the disclosures UMC and Jinhua would have to make in defense of the civil case “would likely be in excess of that to which the government would be entitled under the Federal Rules of Criminal Procedure” and citing *Fed. Ins. Co. v. Laney*, No. C 12-04708 WHA, 2013 WL 594267, at *3 (N.D. Cal. 2013)).

Lifting the stay here prior to the resolution of the criminal case would raise all of the concerns cited above. Most significantly, it would put key defense witnesses — including current and former employees of Jinhua and UMC, and potentially countless other third parties — in the

impossible position of deciding between putting themselves in jeopardy of potential criminal prosecution by testifying and providing discovery on behalf of Jinhua or asserting their Fifth Amendment, but thereby depriving Jinhua of their favorable testimony. There can be no doubt that the Fifth Amendment rights of Jinhua and UMC employees (including, but not limited to, Chen, Ho, and Wang), the unnamed defendants “Does 1-10,” and so-called “founders” of Jinhua — whom Micron has yet to identify — will be directly implicated if the stay is lifted and the civil case is allowed to proceed. The SAC lists “Does 1-10” as Defendants and alleges that Chen, Wang and Ho and Jinhua’s unspecified “founders” were part of a conspiracy. ECF No. 206-3 at ¶¶13-20, 67. Chen, Wang and Ho were indicted in the criminal case. Although “Does 1-10” and Jinhua’s “founders” were not indicted in the criminal case, as alleged “Co-Conspirators,” they continue to face the significant risk of potential prosecution and thus have valid Fifth Amendment rights. As this Court previously found, because both the civil and criminal actions allege a company-wide conspiracy, UMC and Jinhua officers and employees (other than the three individual defendants in the U.S. criminal case) are likely to be called as witnesses in this case and undoubtedly will assert their respective privileges against self-incrimination as long as the criminal case is ongoing. *See* ECF. No. 247 at 3.

Although Micron argues that Stephen Chen, J.T. Ho, and Kenny Wang are unlikely to ever testify in this case (which is entirely unclear and unknown at this time),³ the Fifth Amendment rights of other current and former Jinhua and UMC employees are directly implicated. Their conduct, knowledge and motivations in developing the DRAM technology will be *the* critical

³ Micron asserts that individual defendants Chen, Ho, and Wang have not participated in the criminal case and argues they never will. This misleading argument should be ignored for a number of reasons. First, Micron offers no evidence to support the allegation that these individuals will never participate in the criminal case—the stay should not be lifted based on mere speculation. Further, Micron inaccurately describes individual defendants Chen, Ho, and Wang as fugitives. ECF No 256 at 10. This statement is false and inflammatory. Chen, Ho, and Wang are not fugitives; as Micron concedes, they reside in countries with no extradition treaties with the United States. ECF No 256 at 10-11 (citing *United States v. Hsu*, 155 F.3d 189, 193 n.2 (3d Cir. 1998) (noting absence of an extradition treaty between the U.S. and Taiwan); *Shannahan v. IRS.*, 672 F.3d 1142, 1144 (9th Cir. 2012) (“China has no extradition treaty with the United States.”)).

1 issues Micron must explore in discovery to make its case. It thus goes without question that these
 2 witnesses will be subpoenaed to testify, produce documents, answer interrogatories, and be under
 3 court order to perform other discovery activities once the stay is lifted. But at the same time, many
 4 of them may justifiably fear being investigated and potentially prosecuted by the Department of
 5 Justice if they agree to testify. Accordingly, “if discovery moves forward, [Jinhua and UMC
 6 officers and employees] will be faced with the difficult choice between asserting [their] right
 7 against self-incrimination, thereby inviting prejudice in the civil case, or waiving those rights,
 8 thereby courting liability in the [criminal] case.” *Jones*, 2005 WL 1287017, at *1.

9 While corporate defendants do not have a privilege against compulsory self-incrimination,
 10 Jinhua’s officers and employees have Fifth Amendment rights and their testimony will be essential
 11 to mounting Jinhua’s defense. *See Taylor, Bean & Whitaker Mortg. Corp. v. Triduanum*
 12 *Financial, Inc.*, No. 2:09-cv-0954 FCD EFB, 2009 U.S. Dist. LEXIS 60849, at *8 (E.D. Cal. Jul.
 13 15, 2009). Accordingly, many officers or employees may “assert their respective privileges
 14 against self-incrimination” rather than testify on Jinhua’s behalf. ECF No. 247 at 3. As such, just
 15 as in 2019, there remains in the civil case a substantial “risk of prejudice to UMC and Jinhua
 16 arising from an inability to obtain testimony from individuals who have the right not to incriminate
 17 themselves.” ECF No. 247 at 4 (citing *Taylor*, 2009 U.S. Dist. LEXIS 60849, at *8 (holding,
 18 where corporation’s directors and officers had been indicted for engaging in the same conduct for
 19 which civil plaintiff sought to hold corporation liable, corporation was “likely to be greatly
 20 prejudiced in [its] ability to meaningfully defend itself in the civil matter”); *Mr. Dee’s, Inc. v. Int’l*
 21 *Outsourcing Servs., LLC*, No. 08-C-457, 2008 WL 4853601, at *1 (E.D. Wis. Nov. 3, 2008)
 22 (holding where corporation, “to mount an effective defense” to civil action, needed testimony from
 23 indicted officers and employees, “risk of prejudice” to corporation “arising from an inability to
 24 access key information and witnesses” was “substantial”)).

25 Because the testimony of these and other Jinhua (and UMC) officers and employees will
 26 be essential to mounting Jinhua’s defense to Micron’s claims, and because there is a serious danger
 27 that these individuals may invoke their Fifth Amendment rights, the Court should refrain from
 28

1 lifting the stay until only after the criminal case is finished. *Taylor*, 2009 U.S. Dist. LEXIS 60849,
 2 at *8. Failure to do so will unquestionably compromise Jinhua’s ability to mount an adequate
 3 defense (*see* Section IV.B.2).

4 **B. The Five Keating Factors Also Weigh Heavily in Favor of a Stay**

5 While protecting the constitutional rights at stake alone warrants a stay, the five factors
 6 enumerated in *Keating* also support a stay.

7 **1. Micron Fails to Establish any Significant Prejudice Caused by a** 8 **Further Stay**

9 Micron’s Motion speculates about the ongoing relationship between UMC and Jinhua, but
 10 in reality, little has changed since the defendants’ motion to stay was granted on July 11, 2019.
 11 The operative facts that counseled in favor of the initial stay remain the same. As explained below,
 12 Jinhua ceased operation when the U.S. Government placed Jinhua on the “Entity List,” continues
 13 to be idle and has taken prompt and appropriate measures to preserve evidence. And Jinhua’s
 14 currently scheduled criminal trial is only 8 months away. If anything, the rationale underlying the
 15 initial stay applies more strongly today. As set forth below, Micron’s interests will not be impaired
 16 from a continued stay of this proceeding pending resolution of the parallel criminal case.

17 **a. Jinhua Has Effectively Ceased Operation Since Being Placed** 18 **on the “Entity List”**

19 Contrary to Micron’s assertions, Jinhua has effectively ceased operations since it was put
 20 on the United States Department of Commerce’s “Entity List” on October 30, 2018, which
 21 prohibits anyone from exporting or transporting to Jinhua “items subject to the EAR [Export
 22 Administration Regulations]” without a license and further imposes a “presumption of denial” as
 23 to any license request. *See* 83 FR 54519-02, 2018 WL 5425570; Declaration of Jinfu Zheng
 24 (“Zheng Decl.”) at ¶ 6; Declaration of Mario Moore (“Moore Decl.”), Ex. B [Saif M. Khan, *U.S.*
 25 *Semiconductor Exports to China: Current Policies and Trends*, CSET (Oct. 2020)], at 12-13
 26 (demonstrating Applied Materials, KLA-Tencor, Lam Research, ASML, Tokyo Electron and other
 27 Japanese SME firms all stopped working with Jinhua immediately after Jinhua was put on the
 28 “Entity List” and thereafter Jinhua halted operations); Declaration of Fei Hu (“Hu Decl.”) at ¶ 3(a).
 For the same reason, UMC also stopped all Jinhua-related research and development activities on

1 October 31, 2018. *See* Moore Decl., Ex. C [Scott Morgan, *Taiwan’s UMC freezes ties with*
 2 *Chinese firm in response to US sanctions*, TAIWAN NEWS (Nov. 1, 2018)]; Zheng Decl. at ¶ 7; Hu
 3 Decl. at ¶ 3(b). To the extent any transfer of any technology developed by UMC occurred, it
 4 happened before Jinhua was placed on the “Entity List.” *See* CR-ECF No. 148 at 6 ¶ 2(n).

5 Micron repeats its unsupported accusations that high-ranking UMC employees’ actions
 6 were under Jinhua’s direction. Despite citing to the entirety of “UMC and Jinhua’s DRAM
 7 Technology Cooperation Agreement and UMC’s Hiring of the Individual Defendants” section of
 8 UMC’s Plea Agreement, Micron failed to identify a single fact in the Plea Agreement to support
 9 its arguments — there are none. *See* CR-ECF No. 148 at 4-10 ¶¶ 2(g)-(z).

10 Micron’s assertion that UMC and Jinhua have used and continue to use Micron’s alleged
 11 trade secrets is solely based on the additional published U.S. patent applications assigned to UMC
 12 and Jinhua between May 23, 2019 and December 2, 2020 (“Additional Published Applications”)
 13 and is misleading.⁴ The Additional Published Applications are being published in the ordinary
 14 course based on applications filed *before* Jinhua was put on the entity list, a fact Micron chose not
 15 to mention. All of the Additional Published Applications claim priority to either a parent Chinese
 16 application or a parent U.S. patent application that was filed on or before October 18, 2018. *See*
 17 Ex. F, Tung Decl. at ¶¶ 4-7. Thus, everything is based on past acts, not ongoing cooperation
 18 between Jinhua and UMC—the cooperation ended when Jinhua was placed on the Entity List.

19 Micron’s Sinophobic allegations reach a new low when it speculates that the PRC would
 20 build a DRAM industry using its alleged “trade secret” “through Jinhua or some surrogate,” “some
 21 other PRC DRAM company,” or “other government-owned DRAM startups.” ECF No. 256 at 2,
 22 5, 7, 16. Not surprisingly, Micron failed to support its political canard by identifying even one

23
 24 ⁴ Notably, Micron provides no support for its assertion (ECF No. 256 at 11) that the 193 patents
 25 issued to UMC and Jinhua disclose confidential information of Micron. Given that the patents are
 26 in the public record (ECF No. 256-6 at ¶¶ 2-3), and many have been there for many months, Micron
 27 has the opportunity to review those patents with a technical expert and identify the purported trade
 28 secrets allegedly disclosed in the patents and yet has chosen not to do so. Micron could also have
 filed a petition with the Patent Office for correction of inventorship as to any patents for which it
 had evidence that the inventions were actually Micron’s. Instead, Micron simply tabulated the
 patents on which UMC and Jinhua are both listed as assignees or applicants, with no technical
 analysis of the actual patents. ECF No. 256-6.

1 such entity. Jinhua has not provided its technology to any third parties, including any Chinese
2 government agencies, officials, or any other Chinese companies. *See* Zheng Decl. at ¶ 8.

3 Micron’s purported concerns about DRAM development in China are belied by its own
4 activities, as it continues to expand its DRAM manufacturing and R&D facilities in China. *See*
5 Moore Decl., Ex. D [Ma Si, *Micron bets on Xi’an plant for accolades*, CHINA DAILY (Apr. 16,
6 2020)] (explaining Micron has Xi’an DRAM chip manufacture plant, Shanghai engineering center,
7 sales, marketing, and customer labs in Beijing, Shanghai and Shenzhen); Hu Decl. at ¶ 3(c).
8 Moreover, Manish Bhatia, Micron’s executive vice president, has publicly stated that expressed
9 “emerging Chinese rivals pose no threat” because the memory chipset industry is a moving target
10 and it would take them time to catch up. Moore Decl., Ex. E [Cheng Ting-Fang, et al., *Micron*
11 *says emerging Chinese rivals pose no threat – for now*, NIKKEI ASIA (Oct. 7, 2020)]; *see also*
12 Moore Decl., Ex. F [*Experience is more important than money: Micron does not believe in the*
13 *imminent success of Chinese memory manufacturers and is afraid of competition with them*, 4YOU
14 DAILY (Oct. 2020)]; Hu Decl. at ¶¶ 3(d)-(e).

15 As concluded by the Court, “as a practical matter, Jinhua’s ability to manufacture DRAM
16 products has been greatly diminished if not entirely foreclosed.” *See* ECF No. 230 at 4. Nothing
17 has changed that observation. There has been no cooperation between UMC and Jinhua since
18 then. Despite Micron’s arguments, a further stay of this case would not result in any prejudice to
19 Micron.

20 **b. There Are Sufficient Remedies Available to Micron**

21 Micron is also unable to show any prejudice because, as the Court has correctly found in
22 its Order granting the stay, any harm to Micron can be remedied by “monetary damages or, . . .
23 an order directing ownership of UMC/Jinhua patents based on Micron trade secrets be transferred
24 to Micron, if it obtains a judgment in its favor.” ECF No. 247 at 5. This is especially true because
25 the technology UMC was working on with Jinhua under the technology development agreement
26 was not the most up-to-date DRAM design. *See* Moore Decl., Ex. H [Peter Singer, *DRAM, NAND*
27 *and Emerging Memory Technology Trends and Developments in 2019*, SEMICONDUCTOR DIGEST
28 (Sept. 13, 2019)] (showing 14nm-20nm are the current DRAM design); Hu Decl. at ¶ 3(g); CR-

ECF No. 148 at 5 (finding the DRAM technology under the UMC and Jinhua technology development agreement was at least one generation behind the most advanced technology back in 2016 by the Taiwan Ministry of Economic Affairs Investment Committee). Such outdated design rules in the DRAM industry cannot support Micron’s allegations that “Micron will never be made whole merely by damages or patent re-assignment” and “they can never be restored.” Micron is free to enforce the patents, if they are transferred to Micron after the final judgment, against any entity employing the patented technology.

Micron’s reliance on *Starlight Int’l, Inc. v. Herlihy*, No. CIV.A. 97-2329-GTV, 1998 WL 560045 (D. Kan. Aug. 4, 1998), is as misplaced now as it was during the briefing of the initial stay. The stay in *Starlight* was granted because there was a significant risk the defendant would dissipate assets. *Id.* at *9. As the Court noted, Micron failed to assert that “Jinhua is likely to dissipate assets, including any current or future patents.” ECF No. 247 at 5 n.6. Yet again, Micron has not asserted such a possibility.

c. Evidence Preservation Measurements Have Been Implemented

Micron’s allegation that the continued stay of the case would risk the loss of third-party evidence is largely unfounded and speculative. Micron specifically pointed out Jinhua’s equipment vendors as such third parties, relying on *Genentech, Inc. v. JHL Biotech, Inc.* But *Genentech* does not support its position. No. C 18-06582 WHA, 2019 WL 1045911, at *25-26 (N.D. Cal. Mar. 5, 2019). Unlike here, in *Genentech*, the third parties were the plaintiff’s direct competitors. *See id.* at *53-54. Jinhua did not disclose any information to any of Micron’s direct competitors or anyone else. *See Zheng Decl.* at ¶ 8. However, Micron has actually subpoenaed at least Applied Materials, Inc., KLA-Tencor Corporation and Lam Research Corporation early in the case and they have participated in this case as interested parties and/or miscellaneous parties. *See Moore Decl., Ex. I* [Notice of Subpoena to KLA-Tencor Corporation (June 4, 2019)]; *Moore Decl., Ex. A* [Notice of Subpoena to Applied Materials, Inc. (June 4, 2019)]; ECF Nos. 145 (demonstrating Micron served a subpoena to Lam Research on July 13, 2018), 146, 147, and 148 (showing Applied Materials, KLA-Tencor and Lam Research all retained counsel in this case).

1 All of these third-party equipment vendors are sophisticated companies and presumably
2 represented by counsel and have been informed about their duty to preserve evidence.

3 Micron's attempt to use its own employee attrition to justify the alleged loss of witnesses
4 and evidence from UMC, Jinhua or third parties is unjustifiable. There is no basis to extrapolate
5 UMC's or Jinhua's employee retention from that of Micron. Nor has Micron supported the notion
6 that memories have failed because former employees are no longer in the same place. Micron's
7 baseless claims about the threat of lost evidence resulting from the passage of time and Micron
8 employees leaving Micron should be rejected. ECF No. 256 at 11, 14. There is no showing as to
9 any relevance of any such employees. Nor is there any showing by Micron that it could not still
10 call those individuals as third-party witnesses in this case. In fact, Micron should be able to
11 preserve all the Micron documents possessed by each of its former employees and its failure to do
12 so cannot serve as a basis for Micron to claim prejudice.

13 In furthering its argument that evidence will be lost, Micron continues to lump Jinhua
14 together with UMC and improperly suggests that because one UMC laptop went missing that is
15 somehow attributable in part to Jinhua. The UMC Public Laptop 2 that Micron claimed has not
16 been provided to the Taiwan authorities or the United States went missing prior to the searches
17 conducted by the Taiwan authority on February 7, 2017, about 10 months before Micron filed the
18 original complaint against UMC and Jinhua in this Court. *See* CR-ECF No. 148 at 9 ¶ 2(y). UMC
19 also agreed to conduct "an internal investigation by a reputable international law firm into the
20 disposition and current whereabouts of Public Laptop 2." *See id.* at 12 ¶ 9(e). Other than by
21 innuendo, Micron made no assertion, and provided no support for the fact that Jinhua has any
22 knowledge about the missing laptop. UMC's inability to locate its Public Laptop 2 cannot be used
23 to infer that Jinhua will destroy evidence.

24 Micron cited Wang Decl. ¶ 3 and Ex. 1 at 10 in support of its claim that "a UMC senior
25 manager ordered the destruction of relevant evidence." A careful review of the cited documents
26 reveals nothing remotely supporting Micron's statement much less the notion that Jinhua had
27 anything to do with it.
28

Jinhua acted appropriately in issuing a document hold notice for this case, and the hold remains in place. *See* Zheng Decl., ¶¶ 3-4. Jinhua implemented measures preserving evidence early in the case and continues to preserve evidence, and Micron has not provided any evidence supporting its alleged concern relating to the destruction by Jinhua, UMC or any of the third parties of evidence during the continued stay of this case. Any prejudice to Micron during the continued stay is thus negligible.

d. Both Jinhua’s Civil and Criminal Investigation Status Show a Continued Stay Has No Prejudice to Micron

When the stay was granted, the civil case was in its very early stages—neither UMC nor Jinhua had answered and Micron’s Second Amended Complaint was dismissed, without prejudice. The Court acknowledged this fact and supported the stay because the “vast majority of factual disputes pertaining to liability in the instant case are likely to be resolved in the course of the criminal case.” ECF No. 247 at 6. The parallel criminal case against UMC supported the Court’s finding, as the criminal investigation against UMC has significantly narrowed to one count. Not only that, the continued stay of this case against Jinhua will not result in an “indefinite delay” as asserted by Micron. The criminal trial is currently scheduled for August 2021. *See* CR-ECF No. 138. With the strong likelihood that the criminal investigation would streamline and narrow the issues, the continued stay of the civil proceeding against Jinhua does not prejudice Micron.

e. The Proximity of the Jinhua Criminal Trials Compels Maintaining the Stay

The fact that the criminal trial is currently scheduled for August 2021 further weighs in favor of continuing the stay. The prejudice to Micron of continuing the trial for this period will be negligible, if not non-existent, and will be far outweighed by the prejudice to Jinhua of lifting the stay. Courts have repeatedly favored a stay of a civil case in circumstances where the overlapping criminal proceeding was close to trial. *Taylor*, 2009 U.S. Dist. LEXIS 60849, at *2 (granting a six-month stay of all proceedings in a civil fraud case when a parallel criminal case was headed to trial); *McCormick v. Rexroth*, Case No. C 09-4188 JF, 2010 U.S. Dist. LEXIS 35783, 2010 WL 934242 (N.D. Cal. Mar. 15, 2010) (“Given the proximity of the trial date in the criminal case, there

1 is little to be gained from a situation in which the Court likely would be called upon to determine
2 what types of discovery do and do not fall within the bounds of a partial stay.”).

3 **2. Jinhua Would Be Significantly Prejudiced if the Stay is Lifted**

4 As detailed previously (*see* Section IV.A), Jinhua would be significantly prejudiced if the
5 stay is lifted because key defense witnesses would be reluctant to waive their Fifth Amendment
6 rights to testify in this case while the criminal case is pending, thus depriving Jinhua of valuable
7 evidence. Moreover, the broader scope of civil discovery may unfairly impact Jinhua.

8 **a. The Implicated Fifth Amendment Rights Extend to Nearly the** 9 **Entire Case and Will Have an Extensive Impact**

10 When evaluating the extent to which a defendant’s Fifth Amendment rights are implicated,
11 courts also consider: (a) the extent to which the issues in the criminal case overlap with those
12 presented in the civil case; (b) the status of the criminal proceeding, including whether the
13 defendant has been indicted; and (c) whether the civil proceedings may expand the scope of
14 criminal discovery beyond the limits of the FRCP or otherwise prejudice the case. *Taylor*, 2009
15 U.S. Dist. LEXIS 60849, at *6; *Walsh Secs., Inc. v. Cristo Prop. Mgmt., Ltd.*, 7 F. Supp. 2d 523,
16 527 (D.N.J. 1998). These factors when analyzed in the context of this case weigh heavily in favor
17 of a stay.

18 The issues in the criminal proceeding do not just overlap with the issues in this proceeding;
19 they are *essentially identical*. *See* ECF No. 247 at 2 (finding the United States has charged UMC,
20 Jinhua, Chen, Ho, and Wang with violating 18 U.S.C. §§ 1831(a) and 1832(a), based on the same
21 allegations set forth in the instant civil case). Both the Government and Micron allege that Jinhua
22 and UMC devised a scheme to steal Micron’s trade secrets and allege the same motivations for
23 doing so. Both implicate the identical cast of players (Jinhua, UMC, Chen, Ho, and Wang), and
24 allege wrongdoing based on the exact same alleged conduct of those players. In its Order denying
25 the Motions to Dismiss, this Court recognized the overlap, finding that the Indictment “aris[es]
26 from the same factual allegations as those asserted in the instant civil action.” *See* ECF No. 247
27 at 13. The Government too recognizes them to be the same, as noted in the Notice of Related
28 Cases filed in this proceeding “all three actions concern . . . the same alleged events, occurrences,

1 transactions, or property.” *See* Notice at 4 (referencing the Complaint, the Indictment, and the
2 Government Complaint). And, in light of the substantial overlap, the Government had no objection
3 to its own civil complaint being stayed because of it. CR-ECF No. 25-1. This factor alone shows
4 that proceeding here will substantially implicate the Defendants’ and most of the essential
5 witnesses’ Fifth Amendment rights against self-incrimination, create unnecessary complexities
6 with respect to discovery, expose the Defendants’ strategy or theories with respect to the criminal
7 proceeding, or otherwise prejudice the pending criminal proceedings.

8 The status of the parallel proceedings does not change this analysis. Here, Jinhua, UMC,
9 Chen, Ho, and Wang have all been indicted. Because the Fifth Amendment rights of Jinhua’s
10 employees have been directly-implicated by the ongoing criminal prosecution and Jinhua cannot
11 realistically defend against Micron’s claims in this proceeding without the assistance of these
12 witnesses, Jinhua’s ability to defend itself in this case will be significantly jeopardized if the stay
13 is lifted while the criminal case is pending.

14 Furthermore, there is considerable risk that the broader scope of civil discovery here will
15 impair the integrity of the parallel criminal proceeding. Disclosures required in this civil
16 proceeding will be highly relevant to the issues in the criminal proceeding and will give the
17 government access to discovery it cannot obtain itself under the Federal Rules of Criminal
18 Procedure (such as documents derived from initial disclosures, defendants’ responses to
19 interrogatories, pleadings, and admissions at any depositions). *See Fed. Ins. Co.*, 2013 U.S. Dist.
20 LEXIS 21250, at *8; *see also Square 1 Bank*, 2014 WL 7206874, at *2 (observing “it is possible
21 that any information [the defendant] produces to fulfill his civil discovery obligations—in
22 particular, requests for admissions and deposition testimony—may be used against him in his
23 criminal case.”); ECF No. 247 at 5 (noting that the disclosures UMC and Jinhua would have make
24 in defense of the civil case “would likely be in excess of that to which the government would be
25 entitled under the Federal Rules of Criminal Procedure”). If this proceeding were to proceed in
26 tandem with the criminal proceeding, the more liberal obligations under civil discovery rules could
27 force Jinhua, UMC — and potentially Chen, Ho, Wang, and other individuals — to produce
28 materials that would expose facts that they would not be required to produce in the criminal

1 proceeding, and substantially prejudice all the indicted parties when they would inevitably be used
2 against them there anyway.

3 Therefore, since the simultaneous civil and criminal proceedings involve nearly identical
4 facts, Fifth Amendment concerns weigh heavily in favor of granting a stay. *See United States v.*
5 *Booth*, CIV-F-09-1689 AWI BAK, 2010 U.S. Dist. LEXIS 9123 (E.D. Cal. Jan. 19, 2010) (staying
6 a civil case completely until resolution of the parallel criminal case); *Taylor*, 2009 U.S. Dist.
7 LEXIS 60849, at *2 (granting a six-month stay of all proceedings in a civil fraud case when a
8 parallel criminal case was ongoing because “[b]oth the civil and criminal cases arise from the
9 alleged scheme to defraud . . . [, and as] such, the pending civil litigation may substantially
10 implicate defendants’ Fifth Amendment rights against self-incrimination, create unnecessary
11 complexities with respect to discovery, expose defendants’ strategy or theories with respect to the
12 criminal case, or otherwise prejudice the pending criminal proceedings.”); *Acacia Corp. Mgmt.,*
13 *LLC v. United States*, CIV F-07-1129 AWI GSA, 2009 U.S. Dist. LEXIS 49484, 2009 WL
14 1531099 (E.D. Cal. May 28, 2009) (granting stay of civil action until the resolution of the parallel
15 criminal case); *Sec. & Exch. Comm’n v. Nicholas*, 569 F. Supp. 2d 1065 (C.D. Cal. 2008) (same);
16 *Bureerong v. Uvawas*, 167 F.R.D. 83 (C.D. Cal. 1996) (same).

17 18 19 **3. Court Convenience and Judicial Resource Efficiency Weigh in Favor of Continuing the Stay**

20 As this Court previously recognized, the United States has charged UMC, Jinhua, Chen,
21 Ho, and Wang with violating 18 U.S.C. §§ 1831(a) and 1832(a), based on the same allegations set
22 forth in the instant civil case, *i.e.*, the acquisition, use and disclosure of Micron's trade secrets. ECF
23 No. 247 at 2. Accordingly, many of the factual disputes pertaining to liability in the civil case are
24 likely to be resolved in the course of the criminal case. *Id.* at 6. As such, even if the civil case
25 remains stayed, the Court will not have to ascend the learning curve twice as asserted by Micron
26 because resolution of at least some of the substantial factual dispute in the criminal case will ease
27 the Court’s burden in learning facts in the civil case. *See* ECF No. 256 at 15.

1 In addition, although the civil case has been pending for approximately three years, it
 2 remains at its very early stages. Neither UMC nor Jinhua has filed an answer. With the exception
 3 of limited jurisdictional discovery related to UMC prior to the commencement of criminal
 4 proceedings, no discovery has commenced. Therefore, continuing the stay is the more efficient
 5 approach. *See Sec. & Exch. Comm'n v. Alexander*, No. 10-CV-04535-LHK, 2010 WL 5388000, at
 6 *5 (N.D. Cal. Dec. 22, 2010) (“[W]hile it is generally preferable to avoid delay, in this case, where
 7 no answer has been filed and several defendants have not yet appeared, a stay may prove the more
 8 efficient course”); *Taylor*, 2009 WL 2136986, at *4 (finding that a stay would make efficient use
 9 of judicial resources where “[n]o answer has been filed, no scheduling order has been issued, and
 10 no dispositive motions have been filed”). A stay is especially appropriate for purposes of advancing
 11 judicial efficiency where, as here, the proceeding is in its very early stages. *See Medina v. Argent*
 12 *Mortg. Co.*, No. 05-cv-2905 RS, 2006 U.S. Dist. LEXIS 30582, at *7-8 (N.D. Cal. May 11, 2006)
 13 (“As discovery has not yet begun in this case, only the initial pleadings have been filed, and no
 14 dispositive motions have yet been presented, the efficient use of judicial resources favors a stay in
 15 this action.”).

16 Micron relies on *Bell ex. rel. Eco Sci. Sols., Inc. v. Taylor*, No. 17-00530 LEK-RLP, 2019
 17 U.S. Dist. LEXIS 70528, at *11 (D. Haw. Apr. 26, 2019) to argue that opening discovery in the
 18 civil case now will not likely create unnecessary duplication with the pending criminal case.
 19 Micron’s reliance is misplaced. In *Bell*, only one of five specifically named individual defendants
 20 in the civil case was charged in the criminal case, and the other four individual defendants were
 21 able to proceed with discovery unhindered by Fifth Amendments concerns in the civil case. As set
 22 forth above, the Fifth Amendment implications in this case are much broader. Here, the SAC lists
 23 “Does 1-10” as Defendants and alleges that Chen, Wang and Ho and Jinhua’s unspecified
 24 “founders” were part of a conspiracy. ECF No. 206-3 at ¶¶13-20, 67. As stated above, all of these
 25 individuals face significant risk of burdening their Fifth Amendment rights by proceeding in the
 26 civil case because they will likely be called as witnesses in the civil case and undoubtedly will assert
 27 their respective privileges against self-incrimination as long as the criminal case is ongoing. *See*
 28 ECF. No. 247 at 3. As such, lifting the stay of the civil case will result in duplicative proceedings

1 because the parties and the Court will be forced to consistently evaluate Defendants' and their
2 witnesses' assertions of the Fifth Amendment rights.

3 In advancing the notion that the Court's case management weighs in favor of lifting the stay,
4 Micron relied on *Cal-Cleve v. Wrag-Time Air Freight, Inc.*, which pertains to a significantly
5 different situation. In *Cal-Cleve*, none of the defendants in the civil case had actually been indicted.
6 No. CV 04-10543 SJO (JTLx), 2005 WL 8157878, at *5 (C.D. Cal. May 20, 2005). Moreover,
7 there, the stay may have lasted at least five years because the federal criminal claims were subject
8 to a five-year statute of limitations. *Id.* at *2, *4. However, in the instant case, the stay has been
9 imposed for only one and a half years. Additionally, resuming the civil proceeding after the
10 criminal proceeding may promote a more streamlined civil discovery and swifter resolution of the
11 same. *See Volmar Distribs., Inc. v. N.Y. Post Co.*, 152 F.R.D. 36, 42 (1993) (stating that "the
12 outcome of the criminal case may encourage settlement"); *Douglas v. United States*, Nos. C 03-
13 04518, C 04-05357, 2006 U.S. Dist. LEXIS 52754, at *17 (N.D. Cal. 2006) (allowing the criminal
14 action to proceed first to narrow the issues and streamline discovery in the civil proceeding); *Wroth*
15 *v. City of Rohnert Park*, No. 17-cv-05339-JST, 2018 WL 888466, at *3 (N.D. Cal. Feb. 14, 2018)
16 (finding that "[t]he resolution of the criminal matter may narrow the scope of civil discovery").
17 Therefore, the Court's interest in convenience and efficiency of judicial resources would be better
18 served by staying this proceeding pending the outcome of the criminal proceeding. *See McCormick*,
19 2010 WL 934242, at *3-4 ("Given the proximity of the trial date in the criminal case, there is little
20 to be gained from a situation in which the Court likely would be called upon to determine what
21 types of discovery do and do not fall within the bounds of a partial stay."); *see also* ECF No. 247
22 at 6 (finding that case management concerns and certain efficiencies in judicial time and resources
23 also weigh in favor of a stay).

24 4. Third Party and Public Interests Will Not Be Impaired By 25 Continuation of the Stay

26 Micron fails to identify any third-party companies in the DRAM sector that would be
27 adversely affected by the continuance of the stay. ECF No. 256 at 16. Micron's reliance on *Cal-*
28 *Cleve* in this regard is misplaced. In *Cal-Cleve*, judicial notice gave rise to the concern that the

1 defendant was likely to continue with its alleged practice of unfairly competing with third-party
 2 providers. 2005 WL 8157878, at *5. Here, Micron does not present any evidence that Jinhua
 3 unfairly competed with any third-party DRAM company, much less unfairly competed using
 4 Micron’s trade secrets. In fact, as explained previously, Jinhua has effectively ceased operation
 5 since being placed on the “Entity List,” which prohibits anyone from exporting or transporting to
 6 Jinhua “items subject to the EAR [Export Administration Regulations]” without a license. Jinhua’s
 7 operational cessation definitely demonstrates its inability to harm any third-party companies in the
 8 DRAM sector.

9 The public interest is furthered by a stay because the “public’s interest in the integrity of the
 10 criminal case is entitled to precedence over the civil litigant.” *Jones*, 2005 U.S. Dist. LEXIS 46962,
 11 at *5 (quoting *Javier H. v. Garcia-Botello*, 218 F.R.D. 72, 75 (W.D. N.Y. 2003)). In fact, the
 12 public’s interest is in “ensuring that the criminal process is not subverted by ongoing civil cases.”
 13 *Douglas*, 2006 U.S. Dist. LEXIS 52754, at *18-19. In granting the stay, this Court previously found
 14 that, although the public has a strong interest in the protection of trade secrets, such interest is
 15 advanced by the pending criminal prosecution. Nothing Micron advanced in its motion justifies
 16 revisiting that analysis.

17 Under the guise of public interest, Micron makes a speculative political argument that,
 18 because China reiterated its commitment to “technology self-reliance,” “other state-owned DRAM
 19 startups in China can easily take Jinhua’s place” and exploit Micron’s technology. ECF No. 256 at
 20 16-17. First, politics have no place in this case. Second, Micron’s assertion that the Chinese
 21 government would order the transfer of the purportedly misappropriated trade secret to other state-
 22 owned DRAM companies in China is wholly unfounded and unsupportable. Jinhua has not
 23 transferred its DRAM technology to any third party. Zheng Decl., ¶ 8. Finally, Micron’s argument
 24 obviously ignores the massive expenditure of funds required to start a DRAM business, activity
 25 that would be obvious to anyone in the industry if such activity were actually occurring. There is
 26 absolutely no support for Micron’s assertions that China would use “other state-owned DRAM
 27 startups in China . . . [to] take Jinhua’s place.” ECF No. 256 at 16.

Here, the public has an interest in ensuring the integrity of the still-pending criminal prosecution of Jinhua, and respecting the integrity of the still-pending criminal proceedings in Taiwan. Moreover, any continuing third-party interest on behalf of Micron is adequately protected by Jinhua's placement on the Entity List, such that Micron will not be prejudiced by the stay.

Furthermore, the interests of third parties and the public are outweighed by Fifth Amendment concerns and the interests of justice. *See Rodriguez v. Summit Mortg. Realty, Inc.*, No. C05-02904 HRL, No. C05-02905 HRL, 2007 U.S. Dist. LEXIS 53179 (N.D. Cal. July 11, 2007) (continuing a stay of civil proceedings for seven months or until the criminal trial was complete, whichever came first, because of Fifth Amendment concerns, and stating that "[w]hile the court and the public generally have an interest in the expeditious resolution of litigation, under the circumstances presented here, the court concludes that, on balance, the interests of justice require an extension of the stay of these proceedings."). Therefore, third-party and public interests will not be impaired by a continuation of the stay.

V. CONCLUSION

For the reasons set forth herein, Jinhua respectfully requests that the Court maintain the stay of this action pending resolution of the parallel criminal proceedings, including the Taiwan criminal appeal and the U.S. criminal trial scheduled for August 2021.

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